

**SUMMARY OF THE CURRENT RECOMMENDED NONCONFORMITY AND
GRANDFATHERING PROVISIONS FOR THE NEW COMPREHENSIVE
ZONING ORDINANCE**

10/14/08

NOTE: The following sets forth the most current revisions recommended by staff. The most recent printed version of the draft zoning ordinance may not show all of these recommendations. If the Mayor and Council concur with the concepts set forth below, the necessary changes will be made to the draft zoning ordinance.

TERMS:

Illegal use or development: A use, building, or site that was not legal when implemented, constructed, or developed. Such use or development is not legal under the current, but soon to be “old” zoning ordinance (“OZO”), and will not be legal under the new comprehensive zoning ordinance (“CZO”).

Existing valid nonconformity: A use, building, or site that was legal when implemented, constructed, or developed but no longer conforms to the provisions of the OZO. Such use or development currently exists as a legal nonconformity and will continue to exist as a legal nonconformity under the CZO, subject to the restrictions and limitations imposed on non-conformities under §25.08.04 (pertaining to nonconforming uses) and §25.08.05 (pertaining to development standards nonconformities) Those restrictions and limitations are summarized below

Nonconformities created by the adoption of the CZO: A use, building, or site that conforms to the provisions of the OZO but will not conform to all of the applicable provisions of the CZO. These uses and developments are deemed to be “conforming” (alternatively referred to as “grandfathered”) under the CZO and may continue to exist with certain limitations and restrictions summarized below.

Future nonconformities: Uses and developments that either comply with the provisions of the CZO or nonconformities that are deemed to be conforming under the CZO but subsequently fail to comply with any changes made to the CZO in the future. Those uses and developments will then become valid nonconformities unless the future amendments to the Zoning Ordinance further grandfather or otherwise address those uses and developments.

RESTRICTIONS:

Restrictions in the CZO on nonconforming uses:

1. Use cannot be expanded, altered, or enlarged, except
 - a. Throughout those parts of a building or structure specifically designed or constructed for such use prior to the effective date of the ordinance rendering the use nonconforming.
 - b. Structural alteration to a building designed for a nonconforming use can be made only for purpose of conforming the use or maintaining the building or structure in safe repair.
2. Use terminates if
 - a. More than 50% of building is destroyed, or
 - b. If use ceases for 3 months or is replaced by a legal use. Use does not cease if during the 3 months:
 - i. The property is actively marketed for tenants to continue the use, or
 - ii. If permits/approvals for renovation/alteration are being pursued.
 - c. If property remains vacant for 12 months (two 6-month extensions may be granted), regardless of marketing or renovation activity, the use terminates.

Restrictions in the CZO on development standards nonconformities for buildings and sites other than Single Unit Detached and Semi-Detached dwellings:

1. Alterations, expansions, and enlargements to the portion of a building or site containing the development nonconformity:
 - a. The portion of a building or site that contains a development standards nonconformity can be altered, expanded, or enlarged for only 3 reasons:
 - i. To maintain the building or structure in safe repair;
 - ii. To improved the façade of a building so as to enhance its appearance; or
 - iii. To comply with ADA or other safety code requirements.

- b. Such alteration or expansion must not exceed that amount reasonably necessary to accomplish the purpose of the alteration or expansion. [Staff recommends this provision in lieu of a 5% cap on the increase in gross floor area because there may be times where ADA or safety considerations require an expansion in excess of 5%.]
 - c. Such alteration requires a Nonconforming Alteration Approval by the Planning Commission. *§25.08.05.d and §25.08.07.a.2.*
- 2. Alterations, expansions, and enlargements to the portion of the building or site not containing the development standards nonconformity can be made subject to the limitation in item 3 below. Such alterations and expansions do not require a nonconforming alteration approval.
- 3. At such time as all expansions and enlargements to the building or site cumulatively exceed 50% of the gross floor area of the building or 50% of the net lot area the entire structure or site must comply with the development standards of the NZO.
§25.0805.a.2.
- 4. A development standards nonconformity terminates if more than 50% of the gross floor area of the building or more than 50% of the net lot area is altered/reconstructed [voluntarily] or damaged by casualty [involuntary].

Restrictions in the CZO on development standards nonconformities for Single Unit Detached and Semi-Detached dwellings

A Single Unit Detached or Semi-Detached dwelling containing, or located on a site containing, a development standards nonconformity:

- a. May not alter, expand, or enlarge the development standards nonconformity except for those reasons and under the conditions provided in item 1. a. in the preceding section..
- b. If destroyed or damaged by casualty (involuntary) may be reconstructed to the size and configuration existing immediately prior to the damage or destruction.
- c. If there is a voluntary destruction of 50% or more of the exterior wall surfaces from the grade up or an expansion of more than 100% of the existing floor area of the dwelling, the entire dwelling and site must be brought into compliance with the CZO. *§25.08.05.a.4.2(should be (b))*

Restrictions in the CZO on development standards nonconformities for buildings, structures, and sites within a Historic District.

1. Subject to the approval of the Historic District Commission, any building or structure within a Historic District Zone can be repaired or replaced in kind in its original location.
2. Renovations or additions beyond the scope of the building or structure at the time of historic designation are subject to the development standards in the CZO.

“Grandfathered” uses and developments in the CZO: The CZO allows certain uses and developments that comply with the OZO but will not comply with the CZO to continue in their current form as a conforming use or development, subject to certain restrictions and limitations. Those uses and developments are commonly referred to as being “grandfathered,” although that term is not used in the CZO.

1. Uses conforming to the OZO but not conforming to the CZO.
 - a. HBBE: A valid home occupation under the OZO is deemed to be a conforming HBBE under the NZO. §25.09.07.f. If the use ceases to operate for one year or the ownership of the property changes, all provisions of the CZO pertaining to a HBBE apply. All home occupations that are illegal under the OZO must comply with provisions of the CZO in order to operate as a valid HBBE.
 - b. Uses in PD zones: Uses specifically permitted in the Governing PD Documents are conforming under the CZO, whether or not such uses are permitted in the designated equivalent zone. As part of an amendment to an approved PD, the Mayor and Council may allow one or more of those uses set forth in the equivalent zone in the area of the PD designated for nonresidential uses.
2. Buildings and site developments (existing and approved but un-built) conforming to the OZO but not conforming to the CZO are deemed to be conforming subject to certain restrictions and limitations. **[Staff agrees with request to delete current draft phrase “conforming for purposes of reconstruction due to involuntary causes” as being unnecessary in light of the restrictions that the CZO places on such buildings and development.]**
 - a. If a building or site development is damaged or destroyed due to involuntary causes the building or development may be reconstructed to the density and configuration existing immediately prior to the damage or destruction. **[Staff recommends that the deletion of the provision allowing reconstruction to included a 5% increase in the nonconformity.]**

- b. If the structure is demolished or a redevelopment of the site occurs through voluntary measures, all reconstruction and redevelopment must comply with the applicable development standards in the CZO.
- c. When extensions or additions to the building or development (including extensions and additions to the conforming and non-conforming portions of the building or development) cumulatively exceed 50% of the gross floor area of the structure or 50% of the net lot area, the entire structure or site must be brought into conformity with the development standards of the CZO.
- d. The development non-conformity can only be altered, extended, or enlarged for the limited reasons set forth in §25.08.05.
- e. Buildings, structures, and developments in PD Zones.
 - i. The development standards in the PD Zones are those set forth in the Governing PD Documents. Existing and approved development can be built, rebuilt, expanded, and enlarged in accordance with those development standards.
 - ii. The development standards of the equivalent zone designated for the particular PD zone apply:
 - A. To the portion of an approved PD that is the subject of a major amendment to the Governing PD Documents.
 - B. To that portion of a PD that is redeveloped.